

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

NIKKI POOSHS,

Plaintiff,

vs.

ALTRIA GROUP, INC., *et al.*

Defendants.

Case No. C 04-01221-PJH-JCS

**PROPOSED ORDER RE: PAGELINE  
DESIGNATIONS AND OBJECTIONS [DR.  
LIPOWICZ]**

Judge: Honorable Phyllis J. Hamilton

The Court has reviewed the parties January 19, 2015 Joint Submission regarding the page and line designations, counter designations and objections to the deposition of Dr. Peter Lipowicz taken on Oct. 12, 13 2011; December 20, 2011; and May 17, 2012. The Courts rulings are as follows:

**I. Dr. Peter Lipowicz (Oct. 12 &13, 2011, Dec. 20, 2011, May 17, 2012 Transcripts)**

**A. Defendants' Objections to Plaintiff's Designations**

<i>Plaintiff's Designations</i>	<i>Defendants' Objections</i>	<i>Court's Ruling</i>
<i>Lipowicz, Peter 10/12/2011</i>		
10:11-16; 11:13-12:10; 17:19-19:22; 20:20-21:14; 26:17-27:12	No objection	<i>Sustained</i>
32:6-7; 32:10-33:1; 33:4-16; 33:18-34:9; 34:11-12	Post-1987; Irrelevant; Unfair prejudice; Vague	<i>Sustained</i>

<i>Plaintiff's Designations</i>	<i>Defendants' Objections</i>	<i>Court's Ruling</i>
<i>Lipowicz, Peter 10/12/2011</i>		
39:14-17; 39:19-40:12; 40:14-41:7; 41:9-15	Post-1987; Irrelevant; Unfair prejudice; Cumulative	<i>Sustained</i>
41:16-19; 41:21-42:3	Post-1987; Irrelevant; Unfair prejudice; Cumulative; Argumentative	<i>Sustained</i>
42:6-9; 42:11-19	Post-1987; Irrelevant; Unfair prejudice; Cumulative	<i>Sustained</i>
45:2	No objection	
45:3-45:14	Post-1987; Irrelevant; Unfair prejudice	<i>Sustained</i>
45:15-46:10	No objection	
46:11-46:14; 46:17-47:3	Post-1987; Irrelevant; Unfair prejudice	<i>Sustained</i>
47:4-12	No objection	
47:13-20	Post-1987; Irrelevant; Unfair prejudice	<i>Sustained</i>
47:21-48:2	No objection	
48:3-48:15	Post-1987; Irrelevant; Unfair prejudice	<i>Sustained</i>
57:12-58:6	Incomplete designation; Post-1987; Irrelevant; Unfair prejudice	<i>Sustained</i>
58:7-58:11; 58:13-59:3; 59:5-19; 59:21-60:16; 60:18-61:13; 61:15-22	Post-1987; Irrelevant; Unfair prejudice	<i>Sustained</i>
62:13-17, 62:20-63:19	Post-1987; Irrelevant; Unfair prejudice; Argumentative	<i>Sustained</i>
63:20-64:12	Post-1987; Irrelevant; Unfair prejudice; Implied preemption	<i>Sustained</i>
70:20-71:7; 72:7-75:9; 75:14-77:20; 77:22-78:15; 78:17-80:6; 80:8-20	No objection	
84:16-88:9	No objection	
88:13-22; 90:2-91:15; 91:17-92:7; 92:9	No objection	
92:11-99:16	No objection	
99:17-100:12	No objection	
100:13-103:1	No objection	

<i>Plaintiff's Designations</i>	<i>Defendants' Objections</i>	<i>Court's Ruling</i>
<i>Lipowicz, Peter 10/12/2011</i>		
103:6-104:19; 104:21-107:11	Unsegregated Aggregate Harm; Design Defect No Longer At Issue In Case; Irrelevant; Unfair prejudice; Hearsay	<i>Sustained</i>
106:9-107:11	Unsegregated Aggregate Harm; Design Defect No Longer At Issue In Case; Irrelevant; Unfair prejudice	<i>Sustained</i>
113:4-118:19	No objection	
119:13-120:5	No objection	
120:6-10, 120:12-20	Post-1987; Irrelevant; Unfair prejudice	<i>Sustained</i>
133:3-136:2	No objection	
136:3-5	Irrelevant; Unfair prejudice	<i>Sustained</i>
136:6-11	No objection	
136:12-13	Irrelevant; Unfair prejudice	<i>Sustained</i>
136:14-138:4; 139:2-141:13	No objection	
156:1-156:7; 156:9-157:7; 157:9-158:1	Irrelevant; Unfair prejudice; Post-1987; Unsegregated Aggregate Harm; Argumentative	<i>Sustained</i>
158:3-20; 158:22-159:14; 159:16-160:8; 160:10-21;	Irrelevant; Unfair prejudice; Post-1987; Unsegregated Aggregate Harm; Design Defect No Longer At Issue In Case; Argumentative	<i>Sustained</i>
165:19-22; 166:5-167:7; 167:9-170:3	Irrelevant; Unfair prejudice; Unsegregated Aggregate Harm; Hearsay	<i>Sustained</i>
170:4-171:15;	No objection	
171:16-172:14; 172:16-173:3; 173:5-22	Irrelevant; Unfair prejudice; Unsegregated Aggregate Harm	<i>Sustained</i>
174:1-14; 174:16-175:11; 176:1-15; 177:8-10	Irrelevant; Unfair prejudice; Unsegregated Aggregate Harm	<i>Sustained</i>
182:18-185:9	Irrelevant; Unfair prejudice; Unsegregated Aggregate Harm	<i>Sustained</i>
185:10-191:18	Irrelevant; Unfair prejudice; Unsegregated Aggregate Harm; Hearsay	<i>Sustained</i>
191:19-192:8; 192:10-11	Irrelevant; Unfair prejudice; Unsegregated Aggregate Harm; Post-1987	<i>Sustained</i>
235:2-5; 235:21-238:6; 240:11-243:10; 243:12-21	Irrelevant; Unfair prejudice; Unsegregated Aggregate Harm; First Amendment (Freedom to Petition); Due Process (Right to Litigate); Attorney-Client Privilege	<i>Sustained</i>
243:22-247:13	Irrelevant; Unfair prejudice; Unsegregated Aggregate Harm	<i>Sustained</i>

<i>Plaintiff's Designations</i>	<i>Defendants' Objections</i>	<i>Court's Ruling</i>
<i>Lipowicz, Peter 10/12/2011</i>		
247:14-17	Irrelevant; Unfair prejudice; Post-1987; Unsegregated Aggregate Harm	<i>Sustained</i>
259:10-260:18	Irrelevant; Unfair prejudice; Unsegregated Aggregate Harm; First Amendment (Freedom to Petition); Due Process (Right to Litigate)	<i>Sustained</i>
260:19-264:15	Irrelevant; Unfair prejudice	<i>Sustained</i>
277:21-279:21	No objection	
279:22-280:16	Irrelevant; Unfair prejudice; Argumentative	<i>Sustained</i>
280:17-282:9	No objection	
282:10-22	Irrelevant; Unfair prejudice; Argumentative	<i>Sustained</i>
283:1-6; 283:8-22	Irrelevant; Unfair prejudice; Design Defect No Longer At Issue In Case; Argumentative	<i>Sustained</i>
284:1-285:11; 285:13-286:4	No objection	
286:5-8; 286:10-287:7; 287:9-288:2	Irrelevant; Unfair prejudice; Argumentative	<i>Sustained</i>
288:3-288:11; 288:13-289:6; 289:8-290:5; 290:7-291:10; 291:12-292:8	Post-1987; Irrelevant; Unfair prejudice; Cumulative	<i>Sustained</i>
<i>Testimony</i>	<i>Defendants' Objections</i>	<i>Court's Ruling</i>
<i>Lipowicz, Peter 10/13/2011</i>		
359:8-16 [Begin with "is it correct"]	No objections	
384:7-386:9	Irrelevant; Unfair prejudice	<i>Overruled</i>
386:18-391:1	Irrelevant; Unfair prejudice; Non-Lung Cancer Conditions (Addiction)	<i>Overruled</i>
391:2-394:21; 395:1-6	Irrelevant; Unfair prejudice	<i>Overruled</i>
395:7-13	No objection	
<i>Testimony</i>	<i>Defendants' Objections</i>	<i>Court's Ruling</i>
<i>Lipowicz, Peter 5/17/2012</i>		
1155:25 (beginning with "Philip") - 1156:2; 1156:4-8; 1156:11-17	Irrelevant; Unfair Prejudice; Post-1987	<i>Sustained</i>
1157:14-17	Irrelevant; Unfair Prejudice; Post-1987; Argumentative; Due Process (Right to Litigate)	<i>Sustained</i>
1160:6-7; 1160:10-16; 1160:19-1161:4; 1161:7-15; 1161:17-20	Irrelevant; Unfair Prejudice; Post-1987; Design Defect No Longer At Issue In Case	<i>Sustained</i>

<i>Testimony</i>	<i>Defendants' Objections</i>	<i>Court's Ruling</i>
<b><i>Lipowicz, Peter 5/17/2012</i></b>		
1168:8-15; 1169:14-17; 1169:20-1170:6	No objection	
1170:7-1170:21; 1170:24-1171:4	No objection	
1171:5-6; 1171:9-19; 1171:21-1172:2	Irrelevant; Unfair Prejudice; First Amendment (Freedom to Petition); Express preemption; Argumentative	<i>Overruled</i>
1172:3-8	No objection	
1172:9; 1172:11-17	Irrelevant; Unfair Prejudice; First Amendment (Freedom to Petition); Express preemption; Argumentative	<i>Overruled</i>
1172:18-1173:14	No objection	

**B. Defendants' Counter-Designations and Plaintiff's Objections**

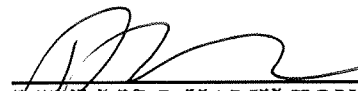
<i>Defendants' Counters</i>	<i>Plaintiff's Objections</i>	<i>Court's Ruling</i>
<b>OCTOBER 12, 2011 DEPOSITION (VOL. 1)</b>		
Errata Sheet to Oct. 12, 2011 Testimony at 115:21 (deleting "IDISA")	No objection	
<b>DECEMBER 20, 2011 DEPOSITION (VOL. 4)</b>		
969:12 - 972:16	No objection	
974:3 - 975:9	No objection	
980:9 - 981:18	No objection	
982:20 - 984:7	No objection	
984:9 - 984:13	Vague, Ambiguous, Irrelevant, unfairly prejudicial (403)	<i>Overruled</i>
984:15 - 984:19	Vague, Ambiguous, Irrelevant, unfairly prejudicial (403)	<i>Overruled</i>
984:21	Vague, Ambiguous, Irrelevant, unfairly prejudicial (403)	<i>Overruled</i>
985:2 - 985:4	Vague, Ambiguous, Irrelevant, unfairly prejudicial (403)	<i>Overruled</i>
996:9-12; 996:14	Lacking in foundation, vague, ambiguous, unfairly prejudicial (403)	<i>Overruled</i>



<i>Defendants' Counters</i>	<i>Plaintiff's Objections</i>	<i>Court's Ruling</i>
996:18-20	Lacking in foundation, vague, ambiguous, unfairly prejudicial (403)	<i>Overruled</i>
996:22	Lacking in foundation, vague, ambiguous, unfairly prejudicial (403)	<i>Overruled</i>
998:10-17	No objection	
1016:2-4; 1016:6-9; 1016:11-14	Design evidence, irrelevant, unfairly prejudicial (403)	<i>Overruled</i>
1019:13 - 1020:14	No objection	
1020:16 - 1020:20	No objection	
1023:1 - 1023:9	No objection	
1023:11 - 1025:9	No objection	
1025:12 - 1025:15	No objection	
1025:17 - 1026:6	No objection	
1026:8-9	No objection	
1026:10 - 1026:16	No objection	
1026:19 - 1027:07	No objection	
1090:11 - 1090:18	No objection	
1090:20 - 1091:4 (ending with "government")	No objection	
1101:10-11	No objection	

IT IS SO ORDERED.

Dated: January 20, 2016.

  
**PHYLLIS J. HAMILTON**  
 United States District Judge